

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: BARTHOMEUF=1

In re Application of:)	Conf. No.: 5887
)	
Jean BARTHOMEUF et al.)	Art Unit: 1654
)	
IA No.: PCT/FR2004/0002476)	Examiner: R. T. Niebauer
IA Filed: September 30, 2004)	
)	
U.S. Appln. No.: 10/574,197)	
371(c) Date: March 31, 2006)	
)	
For: METHOD AND DEVICE FOR)	July 29, 2008
CULTURING LIVE CELLS...)	

REPLY TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building, 401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants are in receipt of the Office Action
mailed May 29, 2008, and applicants reply below. Attached
please find a petition for one month's extension of time and
the petition fee.

Acknowledgement by the PTO of the receipt of
applicants' paper filed under section 119 **would be**
appreciated.

Restriction has been required between what the PTO deems as being two (2) separate inventions under the provisions of PCT rules 13.1 and 13.2. As applicants must make an election even though the requirement is traversed, applicants hereby respectfully and provisionally elect Group II, presently claims 13-21, with traverse and without prejudice.

The PTO takes the position that unity of invention is destroyed by Schorn et al USP 6,085,602 (Schorn) because Schorn allegedly discloses all the technical features of the device of claim 22, whereby there is no general inventive concept. Applicants respectfully disagree.

It is correct that Schorn relates to a bioreactor with a sampling system for withdrawing a sample of liquid contained in the bioreactor vessel and conveying it into a sample tube under sterile conditions through sampling system with no fixed connection permitting serial sampling. In this system, the liquid sample flows from the bioreactor vessel through a conduit and is discharged in a tube at the end of said conduit by a housing bell.

In the method and device according to the present invention, on the other hand, the cell culture sample flows from the bioreactor vessel into an automatic device for selecting cells proliferating in suspension (illustrated in

Fig. 3), and then the selected cells are transferred from the automatic device back to the bioreactor vessel.

In the device described in Schorn, there is no means carrying out transfers of cell back from the tube to the bioreactor vessel. In addition, a tube as disclosed by Schorn is not an automatic device according to the present invention for selecting cells proliferating in suspension by allowing elimination of static cells.

The above noted means, systems and devices, which are essential to the process and apparatus according to the present invention, form the "special technical features" allegedly lacking, referred to by the Examiner on page 2 in the Office Action.

Therefore the present claims should be prosecuted altogether without restriction, i.e. the requirement should be withdrawn.

Even if prior art were to exist upon which a valid rejection could be based, and Schorn simply does not correspond to such prior art for the reason pointed out above, narrower claims in both groups would still share the same or corresponding special technical feature or features, and unity of invention will still exist.

Withdrawal of the restriction requirement is in order and is respectfully requested.

In addition to the restriction requirement, the PTO has also instituted a series of requirements for election of species. Again, as applicants must make elections even though the requirements are traversed, applicants hereby respectfully and provisionally elect as follows:

For the bioreactor vessel, applicants elect an aeration tank from among those recited in claim 17.

For the substrate, applicants' elect a medium containing a compound the metabolic conversion of which is envisaged from among those recited in claim 19.

For the living cell, applicants elect bacteria from among those recited in claim 20.

All the claims are generic, and thus all the claims read on the elected species.

Applicants' reasons for traversal are based on the fact that all the claims are generic, and thus all of the claims inherently relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the special technical features are those which are recited in all of the claims.

Applicants respectfully further note that a complete search of the generic claims would require more than a search of just the elected species. Moreover, all the claims, being generic, must in any event be examined. Accordingly, the

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election of species requirement should be withdrawn consistent with the second paragraph of MPEP 803.

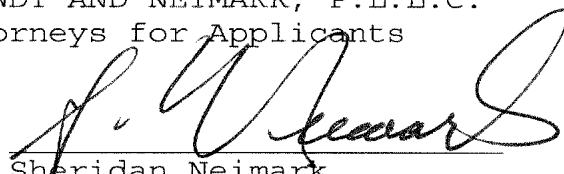
Withdrawal of the requirement is respectfully requested.

Applicants now respectfully await the results of a first examination on the merits.

Respectfully submitted,

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